

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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JOHN WALTER GERMAINE,

Plaintiff,

v.

Case No. 13-C-865

HUBER + SUHNER, INC., WELLS FARGO,  
AMERICAN FUNDS, and THE CAPITAL GROUP  
COMPANIES, INC., CORPORATE OFFICE &  
HEADQUARTERS,

Defendants.

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**ORDER ON PETITION TO PROCEED IN FORMA PAUPERIS**

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On July 29, 2013, the plaintiff, John Walter Germaine (“Germaine”), who is proceeding *pro se*, filed a complaint naming Huber + Suhner, Inc., Wells Fargo, American Funds, and The Capital Group Companies, Inc., Corporate Office & Headquarters as defendants. Accompanying the complaint was Germaine’s petition and affidavit for leave to proceed *in forma pauperis* (a petition to proceed without prepaying fees and costs). On August 7, 2013, Germaine consented to this court’s jurisdiction pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b).

The federal *in forma pauperis* statute, 28 U.S.C. § 1915, is designed to ensure indigent litigants meaningful access to the federal courts. *Nietzke v. Williams*, 490 U.S. 319, 324 (1989). To authorize a litigant to proceed *in forma pauperis*, the court must first determine that the litigant is unable to pay the costs of commencing the action. *See* 28 U.S.C. § 1915(a). Second, the court must determine that the action is neither frivolous nor malicious, does not fail to state a claim, and does not seek money damages against a defendant immune from such relief. *See id.* § 1915(e)(2). In making the latter determination, the court must give a *pro se* plaintiff’s allegations, “however inartfully pleaded,” a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

In his petition and affidavit for leave to proceed *in forma pauperis*, Germaine avers that he and his wife are presently unemployed. Nevertheless, the couple owns two cars, with a combined value of \$6,000. They also own their residence, valued at \$185,000, and have \$4,655.69 in a bank account. Their total monthly income is \$2,883 before taxes, but Germaine lists exactly that amount in monthly expenses. Germaine does not explain the source of his monthly income. Given Germaine's financial status as set forth above, I am satisfied that he *does* have the financial ability to pay the costs of commencing this action.<sup>1</sup>

Even assuming an inability to pay, however, before allowing Germaine to proceed *in forma pauperis*, the court would have to determine that the action is not frivolous or malicious, does not fail to state a claim, and does not seek monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). Germaine's complaint is less than clear. But, as best as the court can discern, he is attempting to assert ERISA claims against Huber + Suhner, Inc., for unlawful distributions. *See* 29 U.S.C. § 1001 *et seq.* He fails, however, to allege any facts supporting any cause of action against the other defendants. Accordingly, the petition to proceed *in forma pauperis* will be denied, and the action will be dismissed as to all defendants except Huber + Suhner, Inc. If Germaine wishes to proceed on his claims against Huber + Suhner, Inc., he shall pay the filing fee on or before September 3, 2013.

**NOW THEREFORE IT IS ORDERED** that Germaine's petition to proceed *in forma pauperis* be and hereby is **DENIED**;

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<sup>1</sup> The court is also troubled by Germaine's statement that, if he had not paid off his home mortgage earlier, he would be "[p]robably dead because [he] would be prone to murder, hypothetical, one of the people that has caused two kind and hard working people [the] loss of their retirements and abilities to work." (Petition at 4.)

**IT IS FURTHER ORDERED** that, if Germaine wishes to proceed on his claims against Huber + Suhner, Inc., he shall pay to the Clerk of Court the required filing fee on or before September 3, 2013;

**IT IS FURTHER ORDERED** that this action be and hereby is **DISMISSED WITHOUT PREJUDICE** as to defendants **Wells Fargo, American Funds, and The Capital Group Companies, Inc., Corporate Office & Headquarters.**

**SO ORDERED** this 13th day of August 2013, at Milwaukee, Wisconsin.

**BY THE COURT:**

s/ William E. Callahan, Jr.  
WILLIAM E. CALLAHAN, JR.  
United States Magistrate Judge